



California Fair Political Practices Commission

September 30, 1987

Maurice F. O'Shea, City Attorney
21815 Pioneer Boulevard
Hawaiian Gardens, CA 90716

Re: Your Request for Advice
Our File No. I-87-216

Dear Mr. O'Shea:

You have requested advice on behalf of Richard O. Vineyard regarding the application of the conflict of interest provisions of the Political Reform Act (the "Act") ^{1/} to his duties on the Hawaiian Gardens city council and redevelopment agency board.

QUESTIONS

Do Mr. Vineyard's interests in a business and real property in downtown Hawaiian Gardens disqualify him from participating in:

1. Decisions about amending the general plan?
2. Decisions about the redevelopment agency's acquisition of property on Norwalk Boulevard?

CONCLUSION

Mr. Vineyard is disqualified from participating in any decision that will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on his business or his real property or both. Concerning the specific decisions you have inquired about, we conclude:

1. Decisions about rezoning the property in the block on which Mr. Vineyard's property is situated require disqualification.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

2. We do not have sufficient facts to determine if decisions about the acquisition of property on the other blocks will have a material financial effect on Mr. Vineyard's property.^{2/}

FACTS

Councilmember Vineyard owns a parcel of land situated on a one-block area along the east side of Norwalk Boulevard extending from Carson Street to 221st Street. The redevelopment agency has established this as part of the downtown center area. Mr. Vineyard runs his muffler business on the property. We do not know the value of the business. The value of the property is between \$10,000 and \$100,000.

On the east side of Norwalk Boulevard from Carson to 221st Streets, the redevelopment agency bought all the lots surrounding Mr. Vineyard's property and razed the improvements on these parcels. A developer bought the land adjacent to the north side of Mr. Vineyard's property and is preparing a plan to develop the whole block. The city has considered acquiring Mr. Vineyard's property by an eminent domain action, but the city has not filed an action. Mr. Vineyard's property is now and will continue to be zoned for commercial use.

A few years ago, the city rezoned part of the block surrounding Mr. Vineyard's property from commercial to high density residential use. Now the council is considering revising the general plan and rezoning the same area back to commercial use. The council also would change the general plan by relocating the proposed library to the proposed fire station's site and deleting the housing project for the elderly. Fire station and senior citizen center sites would be moved to the northeast corner of Norwalk Boulevard and 226th Street. The council also may study traffic circulation patterns and consider construction of a median divider for Norwalk Boulevard.

The redevelopment agency is negotiating to buy real property on the east side of Norwalk Boulevard between 223rd and 224th Streets. So far, Mr. Vineyard has not participated in decisions regarding the acquisition of these properties.

^{2/} For this reason, we choose to treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329 (c)(3).)

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way using his official position to influence a governmental decision in which he has a financial interest. A city council member, who also is a redevelopment agency board member, is a public official. (Section 82048.)

Material Financial Effect

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on a business entity or real property or both in which an owner has an interest of \$1,000 or more. (Section 87103 (a) and (b).)

We assume Mr. Vineyard's business is small and not listed on the New York or American Stock Exchanges. To determine if a decision's effect on his business will be material, Mr. Vineyard should consider whether:

... (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)(1),(2),(3)

To assess the effect on his real property, Mr. Vineyard should consider:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;
or

2. five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(b)(2)

You have not told us the present amount of income from Mr. Vineyard's business, nor the market value of his property. Nor do you know how the redevelopment project or changes to the general plan will affect the value of his properties. We cannot advise you whether the effect of the decision on Mr. Vineyard's business would be enough to disqualify Mr. Vineyard. However, an effect of \$10,000 or more on the gross revenue or assets of a small business is material. (Regulation 18702.2(g).)

Similarly, an effect of \$1,000 or more on the fair market value of Mr. Vineyard's real property will be material because the property's value is less than \$100,000. An effect less than \$1,000 is not material (Regulation 18702(b)(2)(B).)

Moreover, Mr. Vineyard also must disqualify himself if a person or business entity appears before the city council or redevelopment agency board and that person or entity was a source of income to him of \$250 or more during the preceding twelve months. (Regulation 18702.1(a).)

Reasonably Foreseeable Effect

A decision's effect on Mr. Vineyard's business or real property is foreseeable if there is a substantial likelihood that the value of his property will increase or decrease as a result of the decision. An effect does not have to be certain to be foreseeable; however, if an effect is a mere possibility, it is not foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198; see Witt v. Morrow (1977) 70 Cal. App. 3d 817.)

Forseeability of Redevelopment Decisions

The Commission has advised that "redevelopment decisions will be presumed to have a reasonably foreseeable material financial effect on real property or a business located in the redevelopment area." (In re Oglesby (1975) 1 FPPC Ops 71 and Advice Letter to Dennis A. Lee, A-81-137, copies enclosed; see

Witt v. Morrow (1977) 70 CA 3d 817.) This conclusion is based on the fact that:

Redevelopment zones are created for the precise purpose of upgrading portions of a community and creating a positive financial impact on investments and property values in the zone.

In re Gillmor (1977) 3 FPCC Ops. 38, 41
(copy enclosed.)

Effect Distinguishable from that on General Public

To require disqualification, the decision's effect on Mr. Vineyard's economic interest must be distinguishable from that on the general public. (Regulation 18703.) If the decision's effect were material and were different from that on the general public or a "significant segment" of the public, Mr. Vineyard would be disqualified.

Financial Effect on Mr. Vineyard's Economic Interests

Rezoning Decision

Although the disqualification issue has arisen because of amendments to the general plan, the plan also is part of the redevelopment scheme. For this reason, Mr. Vineyard will be disqualified from participating in any decisions regarding rezoning and redevelopment plans for the downtown center area, which will materially affect his economic interests. It is reasonably foreseeable that a decision to rezone the other properties on his block, some of which are adjacent to his property, will have a material financial effect. (See In re Gillmor, id.)

Acquisition Decision

We cannot tell from the land use map whether the property between 223rd and 224th Streets is also part of the planned downtown center of which Mr. Vineyard's property is a part. Again, if a decision concerning these properties has a reasonably foreseeable material financial effect on Mr. Vineyard's economic interests, disqualification is necessary. If the 223rd Street block is within the downtown center redevelopment zone, any decision is presumed to have a reasonably foreseeable financial effect. Mr. Vineyard must apply Regulations 18702, 18702.1 and 18702.2 to determine whether the effect will be material.

I hope this letter helps you determine whether

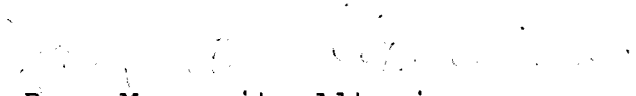
Maurice F. O'Shea
September 30, 1987
Page 6

disqualification is necessary as to property acquisition on the 223rd Street block. We will provide more specific advice if Mr. Vineyard will provide us with additional information about valuations of the business and real property, the financial effect and the role of the 223rd Street property in the redevelopment plan.

I have enclosed the copies that you requested of Mr. Vineyard's 1985 written advice requests. Please call me at (916) 322-5901 if you have any questions.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:jaj
Enclosures



City of

HAWAIIAN GARDENS

ROSALIE M. SHER
MAYOR

KATHLEEN M. NAVEJAS
MAYOR PRO TEM

DONALD E. SCHULTZE
COUNCILMAN

VENN W. FURGESON
COUNCILMAN

RICHARD O. VINEYARD
COUNCILMAN

July 31, 1987

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Re: Request For Advice

Dear Commission:

You previously gave advice concerning Councilman Vineyard, File No. 8-25-095. (I enclose a copy for your reference.)

Mr. Vineyard is a Councilman/Redevelopment Board Member.

The City is undertaking a review and update of zoning and the General Plan of the area on Norwalk Blvd., from Carson St. south to 226th St.. The studies will include possible change of zoning of part of the block of Carson St. to 221st St. presently designated for high density to a change to commercial. A study of traffic circulation including a traffic median on Norwalk Blvd. is being considered. A change in the Fire Station designation is being considered to a Library site. The area designated for a Library site will be considered to be located at the Fire Station site. The Fire Station site is being considered for the corner of Norwalk Blvd. and 226th St.. The area of the Senior Citizen Center to be relocated also.

The Redevelopment Agency is acquiring properties on Norwalk Blvd.. The Agency does not have power of condemnation on any of the property in the subject area. On the Norwalk Blvd., east side, from Carson to 221st St., all properties have been acquired except the parcel owned by Councilman Vineyard. (His property is located on the east side of Norwalk Blvd., the third parcel south of Carson St.) It is commercial and presently a Muffler shop is located thereon and operating as a business.

FAIR POLITICAL PRACTICES COMMISSION
JULY 31, 1987
Page two

The Redevelopment Agency is presently negotiating for properties located on east side of Norwalk between 223rd and 224th St.. Mr. Vineyard did not participate in any decision regarding same, however, he has requested that I seek your opinion as to whether he has a conflict in the following issues:

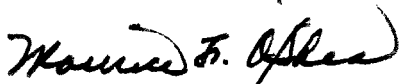
1. The acquisition of properties on the east and west side of Norwalk Blvd., from Carson St. to 226th St..

2. Participating in the review and adoption process of amending the General Plan; relocation of the Library site; relocation of the Fire Station; change of location of Senior Citizen Center; change of zoning from residential to commercial.

I enclose a copy of the existing General Plan diagrams and have designated the areas under consideration. Hopefully, this will assist in graphically depicting the area of concern.

I wish to thank you in advance for your consideration of this matter.

Very truly yours,



MAURICE F. O'SHEA
Hawaiian Gardens City Attorney
Hawaiian Gardens Redevelopment Agency Counsel

MFO/jb

Enclosures

cc: Councilman Vineyard

State of California



Fair Political Practices Commission

P.O. BOX 307 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance	• •	Administration	• •	Executive/Legal	• •	Enforcement
(916) 322-5662		322-5660		322-5901		322-6441

June 11, 1985

Richard O. Vineyard
City Councilman
21815 Pioneer Blvd.
Hawaiian Gardens, CA 90716

Re: Your Request for Advice
Our File No. A-85-095

Dear Mr. Vineyard:

Thank you for your letter requesting advice regarding your duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

You are a member of the City Council and Redevelopment Agency for the City of Hawaiian Gardens. The Redevelopment Agency is considering establishing a downtown center area. The City is approximately one square mile in size, and the entire City has been designated as the Redevelopment Area. The downtown center would be located in a one-block area consisting of 17 parcels which are currently zoned for commercial use. You own one of the 17 parcels which the Redevelopment Agency proposes to acquire.

The map we received from Douglas B. Dunlap, City Administrator of Hawaiian Gardens, shows that 13 of the 17 parcels which would comprise the downtown center area are virtually identical in size and shape. Your parcel is one of the 13 similarly sized parcels.

Health and Safety Code Section 33393 requires a Redevelopment Agency to acquire property through an eminent

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

domain proceeding when a member of the Redevelopment Agency has an interest in the property. Therefore, in order to acquire your property, the Redevelopment Agency for the City of Hawaiian Gardens must initiate an eminent domain proceeding.

QUESTION

Is it a conflict of interest under the Political Reform Act for you to participate in decisions of the Redevelopment Agency concerning the acquisition of the other 16 parcels for the proposed downtown center?

CONCLUSION

It is not a conflict of interest under the Political Reform Act for you to participate in decisions of the Redevelopment Agency concerning the acquisition of the other 16 parcels for the proposed downtown center, so long as your participation would not have a reasonably foreseeable material effect on the value of your property.

ANALYSIS

Section 81000 prohibits a public official from making, participating in, or in any way attempting to use his official position to influence any governmental decision in which he has a financial interest. A public official has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect on, among other interests, an interest in real property of \$1,000 or more held by the public official. Section 87103(b).

You have not questioned your duty to disqualify yourself from participating in any decision of the Redevelopment Agency regarding the purchase of your parcel of property. In fact, the Community Redevelopment Law recognizes that acquisition of property owned by a member of the Redevelopment Agency would present the Redevelopment Agency member with a conflict of interest, and therefore requires that the property be acquired through an eminent domain proceeding. Health and Safety Code Section 33393. However, the question presented is whether you may participate in the Redevelopment Agency's decisions to acquire the other 16 parcels.

When property is taken by a public agency in an eminent domain proceeding, the owner of the property must be awarded compensation for the property, measured by the fair market value of the property. Code of Civil Procedure Section 1263.310. The value of the property may be shown only by the opinions of

Richard O. Woodward
June 11, 1981
Page 3

witnesses qualified to express such opinions, the owner of the property or the owner's spouse, or, if a business entity is the owner of the property, a person designated by the business entity who is knowledgeable as to the value of the property. Evidence Code Section 813.

Opinion testimony about the value of property which is the subject of an eminent domain proceeding may be based on sales of comparable property. Evidence Code Section 816. However, the sale of property to a public agency for a public use, when the property could have been taken in an eminent domain proceeding, is not a permissible basis for opinion testimony as to the value of property being acquired in an eminent domain proceeding. Evidence Code Section 822. Therefore, the purchase price of the other 16 parcels would not be a factor which would be considered when the fair market value of your parcel is determined in an eminent domain proceeding. Accordingly, we conclude that your participation in decisions to purchase the other 16 parcels would not affect the amount of compensation you receive for your property in an eminent domain proceeding.

It has been suggested that your participation in the decisions about the purchase of the other 16 parcels could put you at an advantage during the eminent domain proceeding to acquire your property. We understand that the negotiations for the other 16 parcels have been taking place in executive session. Therefore, a member of the general public would not be permitted to attend those negotiations. A person who attends these sessions would have access to information about the acquisition of the other 16 parcels which would not be available to a member of the general public. If it is reasonably foreseeable that having such information could have a material financial effect on the compensation you will ultimately receive for your property you should, of course, disqualify yourself and absent yourself from the executive sessions.

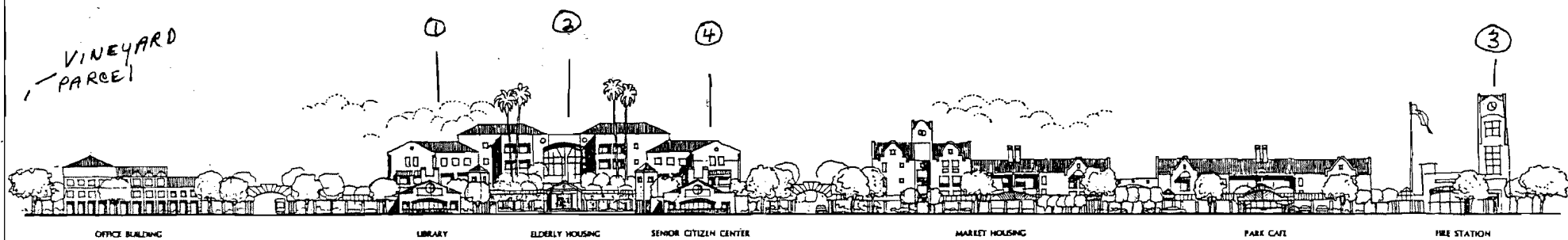
If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

Kathryn E. Donovan

Kathryn E. Donovan
Counsel
Legal Division

KED:plh



GENERAL PLAN & ZONING STUDY:

1. ^① REMOVE LIBRARY & RELOCATE AT FIRE STATION SITE. ^③
2. DELETE ^② ELDERLY HOUSING; CHANGE G/P DESIGNATION TO COMMERCIAL & REZONE.
3. RELOCATE ^④ SENIOR CITIZEN CENTER - SOUTHERLY APPROX. 3 BLOCKS TO N/E CORNER OF NORWALK & 226TH ST.
4. RELOCATE ^③ FIRE STATION TO N/E CORNER OF NORWALK & 226TH ST.

HAWAIIAN GARDENS MASTER PLAN
NORWALK BOULEVARD ELEVATION

KAMNITZER
& COTTON
Architecture and Planning
6330 San Vicente Boulevard
Los Angeles, California 90048

FIGURE 8